Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

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DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 80–285)

Administrative Rulings

Amendments to the Customs Regulations pertaining to the issuance of administrative rulings concerning the tariff classification of imported merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This notice amends the Customs Regulations to authorize the Regional Commissioner of Customs, New York, to issue selected tariff classification rulings. The rulings will be limited to requests for the tariff classification of imported merchandise before the transaction is considered by Customs by reason of arrival or entry of the merchandise. A right of appeal to Customs Headquarters is authorized and the rulings issued by the Regional Commissioner will be monitored closely by the Director, Classification and Value Division, Customs Headquarters, for consistency with law, regulation, and precedent cases.

EFFECTIVE DATE: 30 days from the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Paul G. Giguere, Deputy Director, Classification and Value Division, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 566–5868.

SUPPLEMENTARY INFORMATION:

BACKGROUND

To be certain of the duty treatment merchandise will receive when imported into the United States, importers usually request binding rulings from Customs before the import transaction relating to the merchandise takes place. Currently, these rulings are issued by the Office of Regulations and Rulings (ORR) at Customs Headquarters. While some of the requests require immediate replies in order to be

meaningful, others do not require such quick responses. In the absence of advice from the party requesting the ruling, it usually is not possible for ORR to make a determination with respect to the urgency of any particular ruling request. In addition, some of these requests are routine and merely require the application of previously established precedent. On the other hand, a small percentage are more complex and may present issues not previously considered by Customs or may seek reconsideration of previously decided issues.

Because of increases in ruling requests and decreases in staffing, it has become apparent in recent months that some method must be found to modify the ruling process to provide for the expeditious issuance of rulings. A variety of management improvements have been made in ORR, but despite all these changes, it still takes an average of 100 to 110 days to process a response to an importer. A processing time of 100 to 110 days to issue a response in routine cases is not acceptable if Customs intends to provide a meaningful service to the international trade community.

A detailed examination of the ruling process was undertaken for the purpose of improving the system. Pursuant to the examination, it was concluded that present procedures should be modified to allow for a more active role by the National Import Specialists (NIS), under the authority of the Regional Commissioner of Customs, New York (Region II).

The NIS are a relatively small, skilled group of Customs professionals. They are tariff classification technicians and, unlike import specialists located in other Customs regions, are responsible for very narrow areas of the Tariff Schedules of the United States (19 U.S.C. 1202), known as product lines, and are conversant with the judicial and administrative precedent relating to these product lines.

On July 25, 1980, a notice of proposed rulemaking was published in the Federal Register (45 F.R. 49591), proposing to amend part 177, Customs Regulations (19 CFR part 177), to authorize the Regional Commissioner, New York, to issue selected tariff classification rulings. Interested persons were invited to submit comments regarding the proposal on or before August 27, 1980. In response, 23 comments were received from corporations, law firms, customhouse brokers, trade associations, and individuals. Following an analysis of the comments, set forth elsewhere in this document, and subject to the modifications specified therein, Customs has determined to adopt the proposed changes.

As stated in the notice of proposed rulemaking, inasmuch as the NIS are centrally located and are organizationally under the same person, it is anticipated that uniformity of decisions and the quality of rulings will be maintained after this change is made.

The NIS will issue ruling letters regarding prospective Customs transactions only. They will not prepare final decisions on internal advice requests, further review of protest requests, requests for change of practice, and petitions under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516). Also, they will not prepare final rulings in difference cases.

Requests for tariff classification rulings will be forwarded to the regional Commissioner, New York. Subject to guidelines provided by the Director, Classification and Value Division, Customs Headquarters, the Regional Commissioner will determine whether the request ruling should be issued from the region or whether the matter should be referred to Headquarters. Those members of the public who wish, may make requests directly to Customs Headquarters. However, the Director, Classification and Value Division, Customs Headquarters, may determine to forward requests considered to be routine to the Regional Commissioner for reply.

Customs Headquarters will retain authority to issue rulings in all matters brought to its attention and to review independently all ruling letters issued by the Regional Commissioner. If the importer or other person to whom a ruling letter is issued disagrees with the tariff classification he may petition the Director, Classification and Value Division, Customs Headquarters, for review of the ruling.

If an actual importation of merchandise occurs after receipt of a request for a ruling but before the issuance of the ruling, the Regional Commissioner will handle the matter in the same way it is currently handled by Headquarters (i.e., the party seeking the ruling must advise Customs of the fact an actual importation has occurred; assuming no material change in the facts, the request will continue to be treated by Customs as a prospective ruling request).

The rulings signed by the Regional Commissioner will be binding on Customs. They will not be withdrawn retroactively to the detriment of the party on whose behalf the ruling was requested. Further, if published, those rulings will create established and uniform practices.

DISCUSSION OF COMMENTS

A majority of the commenters responding to the notice of proposed rulemaking endorse Customs proposal to authorize the Regional Commissioner, New York, to issue selected tariff classification rulings. They are of the opinion that implementation of the proposal is an intelligent use of Customs resources and will: benefit all parties; provide more rapid processing of ruling requests in a manner which promotes the uniformity and quality of decisions; enhance the service which Customs offers the importing community; and, enhance the responsibility of the NIS.

Other commenters believe, however, that there is no basis to support or validate the proposal and that it is generally ill-advised.

Two commenters do not believe that the NIS possess the legal skills and background to issue administrative rulings which will bind Customs. Another questions whether the NIS have the legal competence to make determinations involving uniform and established practices.

As previously noted, the NIS are conversant with the judicial and administrative precedent relating to the product lines for which they are responsible. The ruling requests handled by the NIS will be routine and will not involve any other complicating factors. The NIS will not determine the existence or nonexistence of uniform and established practices. For these reasons, Customs is of the opinion that the NIS possess the legal skills and background commensurate with the tasks which they will be assigned. In addition, to insure consistency with law, regulation, and precedent cases, rulings issued by the Regional Commissioner will be closely monitored by the Director, Classification and Value Division, Customs Headquarters.

Although rulings issued by the Regional Commissioner will create established and uniform practices of published, all of these rulings will be reviewed by Headquarters before publication.

One commenter expresses concern that the proposal does not prescribe standards for determining when a request for tariff classification is complex or sensitive. Another states that it appears that by using the terms complex and sensitive Customs is imposing criteria or policy considerations to be applied in issuing administrative rulings. One commenter notes that the burden of determining which issues are complex or sensitive is on the requester and asks if there will be a procedure for complex requests sent to New York to be forewarded to Headquarters and for less complex requests to be sent from Headquarters to New York.

Apparently, the use of the terms complex and sensitive in the notice of proposed rulemaking caused some confusion among the commenters. The terms were used to indicate only that the administrative rulings issued by the Regional Commissioner would be routine and would not involve complicating factors. Customs did not intend to establish criteria or policy considerations to be applied to the administrative ruling process. However, to avoid further confusion, the terms have been deleted from the final amendments.

The Director, Classification and Value Division, Customs Headquarters, will develop guidelines to be followed in transferring requests between Headquarters and the New York Region.

One commenter asks which ruling would take precedence if there is a conflict between rulings issued by Headquarters and the Regional

Commissioner. Another asks whether the NIS will continue to advise Headquarters in internal advice and protest review cases after the proposed amendments are implemented.

In the event of a conflict between rulings issued by Headquarters and the Regional Commissioner, the Headquarters ruling would govern. Because the NIS possess expert technical knowledge, they will continue to advise Headquarters in internal advice, protest review, and other such cases.

Two commenters note that, although they are essentially requests for tariff classification rulings, many ruling requests involve the application of special provisions and should be forwarded to and answered by Headquarters. One commenter suggests that rulings concerning the conditional free entry of merchandise from insular possessions, the generalized system of preferences (GSP), and original automotive equipment from Canada should be issued only by Customs Headquarters.

Customs agrees that these types of requests present issues which are more appropriate for Headquarters review. Accordingly, the Director, Classification and Value Division, Customs Headquarters, will develop and issue guidelines instructing the Regional Commissioner which of these requests are to be forwarded to Headquarters for reply.

Three commenters suggest that application of the prohibition in section 177.1(b), Customs Regulations, bring Customs personnel from ordinarily discussing substantive Customs questions before receiving a written request for a ruling, is too restrictive to apply to the NIS. Importers now may call the NIS for a general indication of the proper classification of merchandise or for an idea of the way in which the NIS would approach the classification of the article. They do not expect Customs to be bound by this oral advice, however, the commenters note that such discussions frequently reveal that a formal ruling request is unnecessary because the classification in issue is well settled. The commenters are of the opinion that the prohibition would discourage an expeditious method of handling requests for information, that the number of requests for formal rulings would increase, and that the goal of expediting the issuance of administrative rulings would be inhibited.

Customs agrees that informal discussion is essential to the expeditious handling of requests for administrative rulings, that impediments to the exchange of information should be eliminated on all levels, and that the prohibition on discussion is unnecessary. So that both the NIS and Headquarters personnel may be free to discuss the issues involved in a specific situation, section 177.1(b) has been modified to delete the prohibition restricting Customs personnel from discussing

substantive Customs questions before receiving a written request for a ruling. Of course, a binding ruling will be issued only after Customs has received a written request.

One commenter asks whether the failure to request a meeting to discuss the issues in a particular case at the time a ruling request is filed would bar such a request at a later late.

A request for a meeting should be made at the time a ruling request is filed. However, when it is requested after filing, a conference may be scheduled if the Customs employee considering the ruling request determines that a conference would be helpful in deciding the issues involved.

Two commenters suggest that American manufacturers, businesses, and trade asssociations with interests related to particular imports should be included as parties entitled to file ruling requests.

Section 177.1(a)(1), now, and as amended by this document, provides that upon written request with respect to a specifically described Customs transaction, Customs will issue administrative rulings setting forth a definitive interpretation of applicable law or other appropriate information to importers or other interested parties. Customs believes that American manufacturers, businesses, and trade associations with interests related to particular imports fall within the scope of the phrase "other interested parties." It should be noted, however, that although request for administrative rulings may be issued to American manufacturers by either Customs Headquarters or the Regional Commissioner, all administrative proceedings under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), must be handled at Customs Headquarters.

Two commenters are of the opinion that there should be some time limit within which the Regional Commissioner must respond to request for administrative rulings. One commenter suggests that 30 days from the receipt of the request would be appropriate.

Customs agrees that it is desirable to establish a time limit for the issuance of ruling letters by the Regional Commissioner. However, it is not possible at this time to determine whether 30 days would be appropriate. When practicable, the Director, Classification and Value Division, Customs Headquarters, will issue guidelines directing the Regional Commissioner to process all requests within a specific time limit.

One commenter believes that the 30 days provided to appeal to Headquarters from a ruling letter issued by the Regional Commissioner is insufficient to analyze the initial ruling and develop information in support of a petition for review. Two other commenters suggest that rulings issued by the Regional Commissioner and appealed to Headquarters should not be put into effect, published, or dissemi-

nated to the public or to Customs field offices until the Headquarters review is complete. One commenter is of the opinion that appeals will follow all except the most perfunctory or obvious cases and that if so, the proposal would effect no change.

Customs agrees that the 30-day appeal period does not provide adequate time to analyze a ruling and to develop information in support of a petition for review. Proposed section 177.2(b)(2)(C) has been modified to delete the 30-day limitation. Customs does not agree that rulings issued by the Regional Commissioner and appealed to Headquarters should not be implemented until Headquarters review is completed. If Headquarters determines that the rate of duty applied by the NIS should be lowered, the lower rate will be applied to all pending unliquidated entries covering the same merchandise. In cases where Headquarters determines that the rate of duty applied by the NIS should be increased, the higher rate will apply only to entries or withdrawals from warehouse for consumption made after the date of the ruling.

As noted, the NIS possess a thorough understanding of specific trade and product lines. They are conversant with the judicial and administrative precedent relating to these product lines. In addition, they will be dealing with routine issues solely within their areas of expertise. For these reasons, Customs believes that the NIS are capable of answering the majority of requests which they will receive to the satisfaction of all requesters. We do not believe that Headquarters will be inundated with requests for appeals from rulings issued by the Regional Commissioner as a result of this new procedure.

One commenter states that a ruling issued by the Regional Commissioner should not bind Customs to a uniform and established practice without first being reviewed by Headquarters. Another believes that all ruling letters issued by the Regional Commissioner should be reviewed (by Headquarters, it is presumed) for legal correctness. A third commenter suggests that all of the rulings issued by the Regional Commissioner should be advisory only and that Headquarters alone should issue binding rulings.

As previously noted, the Regional Commissioner will not be authorized to make findings with respect to the existence or nonexistence of established and uniform practices. Administrative rulings issued by Customs Headquarters or the Regional Commissioner, which are not published, will be applied only with respect to transactions involving articles identical to those which were the subject of the ruling letter. No other person should rely on a ruling letter or assume that principles of that ruling will be applied in connection with any transaction other than the one described in the letter

The Director, Classification and Value Division, Customs Head-

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quarters, will institute a procedure to review all rulings issued by the Regional Commissioner before publication. Further, all findings with respect to the existence or nonexistence of uniform and established practices will be made by Headquarters. Customs does not agree that all rulings issued by the Regional Commissioner should be reviewed for legal correctness, nor that only Headquarters should issue binding rulings. As previously noted, the NIS possess the requisite expertise to issue rulings relating to the product lines within their areas of expertise.

One commenter suggests that the authority of the Regional Commissioner to modify or revoke ruling letters should be specifically set forth in the regulations and that he should not be allowed to revoke or modify rulings issued by Headquarters. Another states that no modification or revocation of a ruling letter should be allowed to take effect less than 180 days after the date of issue. A third is of the opinion that modifications and revocations of unpublished rulings should be published in the CUSTOMS BULLETIN in the same manner as modifications and revocations of published rulings.

Customs agrees that the Regional Commissioner should not be allowed to modify or revoke: (1) Rulings issued by Headquarters; or (2) other rulings which have been published. Proposed section 177.9(d) has been modified to reflect this change. Because unpublished rulings frequently are made available to the public as an indication of Customs position in regard to previous importations of merchandise, Customs agrees that the public should be given notice if the position is changed. Accordingly, where circumstances warrant, Customs will publish modifications and revocations of unpublished rulings. Further, only Customs Headquarters will be authorized to revoke rulings issued by the Regional Commissioner.

Customs does not agree that there should be a 180-day grace period before the modification or revocation of a ruling letter takes effect. Customs policy in this area is well settled and the commenter did not present sufficient reason for Customs to alter it at this time.

Two commenters suggest that the authority to issue administrative rulings should not be delegated only to the Regional Commissioner, New York, but that each region should be delegated authority to issue rulings in its area of expertise. One commenter believes that the regulations should state specifically that the authority to issue administrative rulings in the New York region is delegated to the Assistant Area Director, Classification and Value.

Customs previously has set forth its reasons for amending part 177 to delegate to the Regional Commissioner, New York, the authority to issue administrative rulings. Because the NIS are knowledgeable in the judicial and administrative precedent relating to their product lines, Customs is of the opinion that of all the nine Customs regions,

the New York NIS are uniquely qualified to issue administrative rulings directly to the general public.

Customs is of the opinion that the authority to issue rulings should be delegated to the Regional Commissioner, New York, as the chief Customs official in the region. He may then redelegate this authority to the appropriate subordinate.

One commenter suggests that a procedure similar to that set forth in section 14.3(g)(1), Customs Manual, be established providing for Headquarters resolution of difference cases between counterpart import specialists before issuance of a binding ruling by New York.

Customs does not believe that such a procedure is necessary. As previously stated, only Headquarters will issue rulings in difference cases. These cases will not be referred to New York for the issuance of rulings.

Although an individual now must request at the time of filing that privileged or confidential material not be disclosed, another commenter believes that all identifying material in ruling requests should be presumed to be confidential and should not be disclosed without the permission of the requesting party. The commenter also suggests that the regulations provide that a request for nondisclosure may be made at any time before issuance of the ruling.

Customs agrees that a request for nondisclosure should be made any time before issuance of a ruling. Sections 177.2(b)(7) and 177.8 (a)(3) have been modified accordingly. However, because it would be inconsistent with present law (5 U.S.C. 552), Customs cannot presume that all identifying matter in ruling requests is privileged or confidential.

Several comments relating to staffing and workload considerations are not being addressed at this time because they are management concerns.

REGULATIONS DETERMINED TO BE NONSIGNIFICANT

In a directive published in the Federal Register on November 8, 1978 (43 F.R. 52120), implementing Executive Order 12044, Improving Government Regulations, the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the Federal Register and codified in the Code of Federal Regulations to be significant. However, regulations which are nonsubstantive, essentially procedural, which do not materially change existing or establish new policy, and which do not impose substantial additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected, with Secretarial approval, may be determined not to be significant. Accordingly, it has been determined that this document does not meet the

Treasury Department criteria in the directive for significant regulations.

DRAFTING INFORMATION

The principal author of this document was Lawrence P. Dunham, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in this development.

ADOPTION OF THE PROPOSED REGULATIONS

The proposed regulations set forth in the notice published in the Federal Register on July 25, 1980 (45 F.R. 49591), are adopted subject to the revisions made below. Certain other nonsubstantive changes also have been included in the document.

AMENDMENTS TO THE REGULATIONS

Part 177, Customs Regulations (19 CFR part 177), is amended as set forth below.

WILLIAM T. ARCHEY
(For Commissioner of Customs).

Approved: November 17, 1980.
RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[Published in the Federal Register, December 3, 1980 (45 F.R. 80100)]

PART 177—ADMINISTRATIVE RULINGS

1. Section 177.0 is amended to read as follows:

§ *177.0 Scope.*

This part relates to the issuance of rulings to importers and other interested persons by the Headquarters Office of the United States Customs Service or the Regional Commissioner of Customs, Region II, New York ("Regional Commissioner, Region II"). It describes the situations in which a ruling may be requested, the procedures to be followed in requesting a ruling, the conditions under which a ruling will be issued, the effect of a ruling when it is issued, and the publication of rulings in the CUSTOMS BULLETIN. The rulings issued under the provisions of this part will usually be prospective in application and, consequently, will usually not relate to specific matters or situations presently or previously under consideration by any Customs Service field office. Accordingly, the rulings requested under the provisions of this part should be distinguished from the administrative rulings, determinations, or decisions which may be requested under procedures

set forth elsewhere in this chapter, including, but not limited to, those set forth in Part 12 (relating to submissions of proof of admissibility of articles detained under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307)). Part 103 (relating to disclosure of information in Customs files), Part 133 (relating to disputed claims of piratical copying of copyrighted matter), Subpart C of Part 152 (relating to determinations concerning the dutiable value of merchandise by Customs field officers), Part 153 (relating to enforcement of the Antidumping Act, 1921, as amended), Part 159 (insofar as it relates to countervailing duties), Part 171 (relating to fines, penalties, and forfeitures), Part 172 (relating to liquidated damages), Part 174 (relating to protests), and Part 175 (relating to petitions filed by American manufacturers, producers, or wholesalers pursuant to section 516 of the Tariff Act of 1930, as amended). Nor do the provisions of Part 177 apply to requests for decisions of an operational, administrative, or investigative nature which are properly within the cognizance of a Customs Headquarters Office other than the Office of Regulations and Rulings.

2. Sections 177.1 (a)(1), (b), and (d) (1) and (2) are amended to read as follows:

§ *177.1 General ruling practice and definitions.*

(a) *The issuance of rulings generally*—(1) *Prospective transactions.* It is in the interest of the sound administration of the Customs and related laws that persons engaging in any transaction affected by those laws fully understand the consequences of that transaction prior to its consummation. For this reason, the Headquarters Office of the United States Customs Service or the Regional Commissioner, Region II, will give full and careful consideration to written requests from importers or other interested parties for rulings or information setting forth, with respect to a specifically described Customs transaction, a definitive interpretation of applicable law, or other appropriate information. Generally, a ruling may be requested under the provisions of this part only with respect to prospective transactions—that is, transactions which are not already pending before a Customs Service office by reason of arrival, entry, or otherwise.

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(b) *Oral advice.* The Customs Service will not issue rulings in response to oral requests. Oral opinions or advice of Customs Service personnel are not binding on the Customs Service. However, oral inquiries may be made to Customs Service offices regarding existing rulings, the scope of such rulings, the types of transactions with respect to which the Headquarters Office or the Regional Commissioner, Region II, will issue rulings, the scope of the rulings which may be

issued, or the procedures to be followed in submitting ruling requests, as described in this part.

* * * * * * *

(d) *Definitions.* (1) A "ruling" is a written statement issued by the Headquarters Office or the Regional Commissioner, Region II, that interprets and applies the provisions of the Customs and related laws to a specific set of facts. A "ruling letter" is a ruling issued in response to a written request therefor and set forth in a letter addressed to the person making the request or his designee. A "published ruling" is a ruling which has been published in the CUSTOMS BULLETIN.

(2) An "information letter" is a written statement issued by the Headquarters Office or the Regional Commissioner, Region II, that does no more than call attention to a well-established interpretation or principle of Customs law, without applying it to a particular set of facts. An information letter may be issued in response to a request for a ruling when (i) the request suggests that general information, rather than a ruling, is actually being sought, (ii) the request is incomplete or otherwise fails to meet the requirements set forth in this part, or (iii) the ruling requested cannot be issued for any other reason, and (iv) it is believed that general information may be of some benefit to the party making the request.

* * * * * * *

3. Sections 177.2 (a), (b)(2)(ii), (b)(7), and (d) are amended to read as follows:

§ *177.2 Submission of ruling requests.*

(a) *Form.* A request for a ruling should be in the form of a letter. Requests for Valuation and Carrier rulings should be addressed to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, D.C. 20229. The Division and Branch in the Office of Regulations and Rulings to which the requests should be directed may also be indicated, if known. Requests for Tariff Classification rulings should be addressed to the Regional Commissioner of Customs, Region II, Attn: Classification and Ruling Requests, New York, New York 10048.

(b) * * *

(1) * * *

(2) * * *

(ii) *Tariff classification rulings.*

(A) If the transaction involves the importation of an article for which a ruling as to its proper classification under the provisions of the Tariff Schedules of the United States is requested, the request for a ruling should include a full and complete description of the

article and whenever germane to the proper classification of the article, information as to the article's chief use in the United States, its commercial, common, or technical designation, and, where the article is composed of two or more materials, the relative quantity (by weight and by volume) and value of each. The ruling request should also note, whenever germane, the purchase price of the article, and its approximate selling price in the United States.

(B) Ruling letters issued by the Regional Commissioner, Region II, are limited to prospective transactions. The Regional Commissioner, Region II, shall not prepare final decisions under section 177.11 (Requests for Advice by Field Offices), section 174.23 (Further Review of Protests), section 177.10 (Change of Practice), 19 U.S.C. 1516 (petitions under section 516, Tariff Act of 1930), or 14.3(g)(1) Customs Manual ("difference cases").

(C) The requesting party may send the request directly to the Director, Classification and Value Division, U.S. Customs Service, Washington, D.C. 20229. The Headquarters Office retains authority to independently review all tariff classification ruling letters issued by the Regional Commissioner, Region II. If the importer or other person to whom a ruling letter is issued disagrees with the tariff classification set forth, he may petition the Director, Classification and Value Division, U.S. Customs Service, Washington, D.C., for review of the ruling.

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(7) *Privileged or confidential information.* Information which is claimed to constitute trade secrets or privileged or confidential commercial or financial information regarding the business transactions of private parties the disclosure of which would cause substantial harm to the competitive position of the person making the request (or of another interested party), must be identified clearly and the reasons such information should not be disclosed, including, where applicable, the reasons the disclosure of the information would prejudice the competitive position of the person making the request (or of another interested party) must be set forth.

(d) *Requests for immediate consideration.* The Headquarters Office and the Regional Commissioner, Region II, will normally process requests for rulings in the order they are received and as expeditiously as possible. However, a request that a particular matter be given consideration ahead of its regular order, if made in writing at the time the request is submitted, or subsequent thereto, and showing a clear need for such treatment, will be given consideration as the particular circumstances warrant and permit. Requests for special consideration made by telegram will be treated in the same manner

as requests made by letter, but rulings will not ordinarily be issued by telegram. In no event can any assurance be given that a particular request for a ruling will be acted upon by the time requested. However, upon request and where a clear need is shown for such action, a collect telephone call will be made to advise that the ruling letter has been issued and is being mailed.

4. Sections 177.4 (a) and (b) are amended to read as follows:

§ 177.4. Oral discussion of issues.

(a) *Generally.* A person submitting a request for a ruling and desiring an opportunity to orally discuss the issue or issues involved should indicate that desire in writing at the time the ruling request is filed. Such a discussion will only be scheduled when, in the opinion of the Customs personnel by whom the ruling request is under consideration, a conference will be helpful in deciding the issue or issues involved or when a determination or conclusion contrary to that advocated in the ruling request is contemplated. Conferences are scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the ruling request. Accordingly, the parties will not be bound by any argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so bound in writing. The conference will not conclude with the issuance of a ruling letter.

(b) *Time, place, and number of conferences.* If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. Except under highly unusual circumstances, the conference will be held at the Headquarters Office of the Customs Service in Washington, D.C., or at Region II, New York. No more than one conference with respect to the matters set forth in a ruling request will be scheduled, unless, in the opinion of the Customs personnel by whom the ruling request is under consideration, additional conferences are necessary.

* * * * * * *

5. Section 177.5 is amended to read as follows:

§ 177.5 Change in status of transaction.

Each person submitting a request for a ruling in connection with a Customs transaction shall immediately advise Customs in writing of any change in the status of that transaction, as defined in § 177.1(d)(3). In particular, the Headquarters Office or the Regional Commissioner, Region II, must be advised when any transaction described in the ruling request as prospective becomes current and under the jurisdiction of any Customs Service field office. In addition, any person engaged in a Customs transaction coming under the jurisdiction of a Customs Service field office and having previously requested a ruling

with respect to that transaction shall advise the field office of that fact. The field office will normally withhold action with respect to any transaction for which a ruling has previously been requested pending the disposition of the ruling request.

6. Section 177.6 is amended to read as follows:

§ 177.6 Withdrawal of ruling requests.

Any request for a ruling may be withdrawn by the person submitting it at any time before the issuance of a ruling letter or any other final disposition of the request. All correspondence, documents, and exhibits submitted in connection with the request will be retained in the Customs Service file and will not be returned. In addition, the Headquarters Office may forward to Customs Service field offices which have or may have jurisdiction over the transaction to which the ruling request relates, its views in regard to the transaction or the issues involved therein, as well as appropriate information derived from materials in the Customs Service file.

7. Sections 177.8(a)(1), (2), and (3), are amended to read as follows:

§ 177.8 Issuance of rulings.

(a) *Ruling letters*—(1) *Generally.* The Headquarters Office and the Regional Commissioner, Region II, will endeavor to issue ruling letters setting forth their determinations with respect to a specifically-described Customs transaction whenever a request for such a ruling is submitted in accordance with the provisions of this part and it is in the interest of the sound administration of the Customs and related laws to do so. Otherwise, a request for a ruling will be answered by an information letter or, in those situations in which general information is likely to be of little or no value, by a letter stating that no ruling can be issued.

(2) *Submission of ruling letters to field officers.* Any person engaging in a Customs transaction with respect to which a ruling letter has been issued by the Headquarters Office or the Regional Commissioner, Region II, shall ascertain that a copy of the ruling letter is attached to the documents filed in connection with that transaction with the appropriate Customs Service field office or otherwise bring the ruling to the attention of the appropriate Customs officer. A copy of any ruling letter received after the filing of such documents shall be forwarded immediately to the appropriate Customs Service field office.

(3) *Disclosure of ruling letters.* The ruling letter shall be based on the information set forth in the ruling request. No part of the ruling letter, including names, addresses, or information relating to the business transactions of private parties, shall be deemed to constitute privileged or confidential commercial or financial information or trade secrets exempt from disclosure pursuant to the Freedom of Informa-

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tion Act, as amended (5 U.S.C. 552), unless, as provided in § 177.2(b)(7), the information claimed to be exempt from disclosure is clearly identified and the reasons for the exemption are set forth. Before the issuance of the ruling letter, the person submitting the ruling request will be notified of any decision adverse to his claim for exemption from disclosure and will, upon written request to Customs within 10 working days of the date of notification, be permitted to withdraw the ruling request. All ruling letters issued by the Headquarters Office or the Regional Commissioner, Region II, will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

* * * * * * *

8. Sections 177.9(a) and (d) are amended to read as follows:

§ *177.9 Effect or ruling letters; modification or revocation.*

(a) *Effect of ruling letters generally.* A ruling letter issued by the Headquarters Office or the Regional Commissioner, Region II, under the provisions of this part represents the official position of the Customs Service with respect to the particular transaction or issue described therein and is binding on all Customs Service personnel in accordance with the provisions of this section until modified or revoked. In the absence of a subsequent change of practice or other modification or revocation which affects the principle of the ruling set forth in the ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances.

* * * * * * *

(d) *Modification or revocation of ruling letters*—(1) *Generally.* Any ruling letter found to be in error or not in accordance with the current views of the Customs Service may be modified or revoked. Modification or revocation of a ruling letter shall be affected by Customs Headquarters by giving notice to the person to whom the ruling letter was addressed and, where circumstances warrant, by the publication of a notice or other statement in the Customs Bulletin.

(2) *Effect of modification or revocation of ruling letters.* The modification or revocation of a ruling letter will not be applied retroactively with respect to the person to whom the ruling was issued, or to any person directly involved in the transaction to which that ruling related, provided (i) The request for a ruling contained no misstatement or omission of material facts,

(ii) The facts subsequently developed are not materially different from the facts on which the ruling was based,

(iii) There has been no change in the applicable law,

(iv) The ruling was originally issued with respect to a prospective transaction, and

(v) All of the parties involved in the transaction acted in good faith in reliance upon the ruling and retroactive modification or revocation would be to their detriment.

Nothing in this subparagraph will prohibit the retroactive modification or revocation of a ruling with respect to a transaction which was not prospective at the time the ruling was issued, inasmuch as such a transaction was not entered into in reliance on a ruling from the Headquarters Office or the Regional Commissioner, Region II.

9. Sections 177.11(b)(1) is amended to read as follows:

§ 177.11 Requests for advice by field offices.

* * * * * * *

(b) *Certain current transactions (1) When a ruling has been issued*—(i) *Requests by field officers.* If the Headquarters Office, or the Regional Commissioner, Region II, has issued a ruling letter with respect to a particular Customs transaction and the Customs Service field office having jurisdiction over that transaction feels that the ruling should be modified or revoked, the field office will forward to the Headquarters Office, pursuant to § 177.9(b)(1), a request that the ruling be reconsidered. The field office will notify the importer or other person to whom the ruling letter was issued, in writing, that it has requested the Headquarters Office to reconsider the ruling.

* * * * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14 (5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Headnote 11), 1624))

(T.D. 80–286)

General Notice

Vessels in foreign and domestic trades; fee schedule for vessel services

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The Customs Procedural Reform and Simplification Act of 1978 repealed several statutes under which Customs charged and collected fees for specific services provided to vessels by Customs officers. That act authorized the Secretary of the Treasury to establish a new schedule of fees to return to the Government the approximate costs of the services provided. This document sets forth the revised schedule of fees to be charged and collected for 1981 for the specified services.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Jerry Laderberg, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–5706.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Public Law 95–410, the Customs Procedural Reform and Simplification Act of 1978, approved October 3, 1978 (the act), repealed sections 2654, 4381, 4382, and 4383 of the Revised Statutes of the United States (19 U.S.C. 58; 46 U.S.C. 329, 330, and 333), the statutory authority under which Customs had been charging and collecting fees for specific services provided to vessels by Customs officers.

Because these navigation fees, which are set forth in section 4.98(a), Customs Regulations (19 CFR 4.98(a)), did not cover the costs of providing the services, section 214 of the act authorized the Secretary of the Treasury to establish a new schedule of fees to be charged and collected for furnishing these services. The fees are to be consistent with section 501 of the Independent Offices Appropriation Act, 1952 (31 U.S.C. 483a), the so-called user charges statute, which provides that the costs of specific services for private interests shall be reimbursed to the Government.

By T.D. 80–25, published in the Federal Register on January 18, 1980 (45 F.R. 3570), Customs established a fee schedule to be used for 1980, and amended section 4.98(a), Customs Regulations, to provide that a revised fee schedule will be published in the Federal Register and CUSTOMS BULLETIN in December of each year setting forth a revised schedule of navigation fees for the specified vessel services to be performed during the following year. The revised fee schedule is to reflect changes in the rate of compensation paid to the Customs officer performing the service. The fees are to be calculated in accordance with sections 19.5(b) and 24.17(d), Customs Regulations (19 CFR 19.5(b), 24.17(d)), and based upon the amount of time the average service requires of a Customs officer in the fifth step of GS–9.

Because of the Federal pay increase which became effective October 5, 1980, it is necessary for Customs to revise the schedule of fees for 1981 to take into account this increased cost in accordance with section 4.98(a), Customs Regulations. The hourly rate utilized is $13.88, thereby reflecting the change in the rate of compensation paid to a Customs officer in the fifth step of GS–9 performing the service. The fees have been rounded off to the nearest tenth of a dollar.

ACTION

The following revised schedule of navigation fees shall be effective during 1981:

Fee number and description of services:	Fee
1 Entry of vessel, including American, from foreign port:	
(a) Less than 100 net tons	$6.90
(b) 100 net tons and over	13.90
2 Clearance of vessel, including American to foreign port:	
(a) Less than 100 net tons	6.90
(b) 100 net tons and over	13.90
3 Issuing permit to foreign vessel to proceed from district to district, and receiving manifest	13.90
4 Receiving manifest of foreign vessel on arrival from another district, and granting a permit to unlade	13.90
5 Receiving post entry	6.90
6 Receiving official bond not otherwise provided for	3.50
7 Certifying payment of tonnage tax for foreign vessels only	3.50
8 Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated	13.90

AUTHORITY

R.S. 251, as amended, sec. 501, 65 Stat. 290, 92 Stat. 888 (19 U.S.C. 66, 31 U.S.C. 483(a), Public Law 95-410).

DRAFTING INFORMATION

The principal author of this document was Charles D. Ressin, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: November 17, 1980.

WILLIAM T. ARCHEY
(For Commissioner of Customs).

[Published in the Federal Register, December 3, 1980 (45 F.R. 80245)]

(T.D. 80-287)

Air Commerce—Customs Regulations Amended

Section 6.10, Customs Regulations, relating to the applicability to aircraft of Customs laws and regulations applicable to vessels, amended

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 6—AIR COMMERCE REGULATIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that aircraft arriving from any foreign territory and the

persons and merchandise, including baggage, carried on the aircraft shall be subject to the vessel laws and regulations enforced and administered by Customs.

The amendment ends a difference in treatment whereby aircraft arriving from contiguous foreign territory (Canada or Mexico) were not subject to the same administrative and enforcement provisions as aircraft arriving from noncontiguous foreign territory.

EFFECTIVE DATE: 30 days after publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Stuart P. Siedel, Office of the Chief Counsel, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–2482.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The inability to apply the provisions of the Anti-Smuggling Act of 1935 (the act) (19 U.S.C. 1701 et seq.) to aircraft arriving from contiguous foreign territory has hampered Customs enforcement efforts on the United States-Mexico border.

In particular, section 3 of the act (19 U.S.C. 1703) provides for the seizure and forfeiture of vessels built, purchased, or fitted out for the purpose of being employed to defraud the revenue or to smuggle merchandise into the United States or into the territory of a foreign government (providing the foreign government has reciprocal provisions with respect to the laws of the United States). That section further provides that the fact that the vessel has become subject to pursuit as provided in 19 U.S.C. 1581, or fails to display lights as required by law, shall be prima facie evidence that the vessel is being employed to defraud the revenue of the United States.

Under 49 U.S.C. 1509, the Secretary of the Treasury is authorized to apply to civil aircraft the laws and regulations relating to the administration of the Customs laws and to the entry and clearance of vessels, to such extent as the Secretary deems necessary. It is Customs position that under 49 U.S.C. 1509, the provisions of the act relating to seizure of vessels fitted out for smuggling or not displaying lights (19 U.S.C. 1703), are applicable to aircraft, regardless of the origin of the flight. An aircraft thus could be seized under 19 U.S.C. 1703 for having been employed to defraud the revenue or to smuggle merchandise. Operating without lights would constitute a statutory presumption of such violation. However, because of the existing wording of section 6.10, Customs Regulations (19 CFR 6.10), 19 U.S.C. 1703 applies only to aircraft arriving from noncontiguous foreign territories.

Customs officers have documented an increasing number of aircraft crossing the United States-Mexico border under cover of darkness to avoid detection and apprehension. All aircraft are required to display navigation lights after sunset and before sunrise by the Federal Aviation Administration regulations (14 CFR 91.73). Numerous instances of aircraft flying without navigation lights have been detected by Customs officers along the border and many aircraft have been found with seats removed or otherwise altered or fitted out for smuggling. Customs believes that many of these smuggler aircraft could be detected and apprehended if the appropriate Customs laws were applied. Accordingly, on December 17, 1979, a notice was published in the Federal Register (44 F.R. 73122) proposing to amend section 6.10 to provide for the application to aircraft arriving or having arrived from any foreign territory of all enforcement and administrative provisions administered by Customs which are applicable to vessels arriving or having arrived from a foreign port or place. Comments were to have been received on or before February 15, 1980.

DISCUSSION OF COMMENT

The only comment received in response to the proposal raised the following issues:

1. Why section 6.10 differentiated between aircraft arriving from noncontiguous and contiguous foreign territory?

2. How 19 U.S.C. 1703 could serve as the statutory basis for the proposed change because aircraft are specifically excluded by 19 U.S.C. 1401 from the term vessel? and

3. Whether including aircraft within the definition of vessel serves to alter or amend a revenue law by regulation as proscribed by *Morrill* v. *Jones*, 106 U.S. 466 (1882)?

With regard to the first issue, there is no logical or legal argument for preventing an otherwise lawful regulatory amendment merely because the existing regulatory language, written over 40 years ago, can no longer accurately be explained.

As to the second issue, 49 U.S.C. 1509 states that:

* * * * * * *

(b) The Secretary of the Treasury is authorized * * * (3) by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of the customs laws to such extent and upon such conditions as he deems necessary.

(c) The Secretary of the Treasury is authorized by regulation to provide for the application to civil aircraft of the laws and regulations relating to the entry and clearance of vessels to such extent and upon such conditions as he deems necessary.

* * * * * * *

Further, 49 U.S.C. section 1474 provides penalties for the violation of 49 U.S.C. 1509. Hence, title 49 provides the Secretary of the Treasury with the statutory authority to treat aircraft as though they were vessels under 19 U.S.C. 1703.

Because title 49, United States Code, clearly provides the Secretary with statutory authority to apply to aircraft by regulation certain provisions of law applicable to vessels, the third issue raised is irrelevant.

Accordingly, the amendment to section 6.10 is adopted as proposed.

INAPPLICABILITY OF EXECUTIVE ORDER 12044

This document is not subject to the Treasury Department directive (43 F.R. 52120) implementing Executive Order 12044, Improving Government Regulations, because the proposal was in process before May 22, 1978, the effective date of the directive.

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

AMENDMENT TO THE REGULATIONS

Section 6.10, Customs Regulations (19 CFR 6.10), is amended to read as follows:

> 6.10 *General provision.*—Except as otherwise provided for in this part, and insofar as such laws and regulations are applicable, aircraft arriving or having arrived from any foreign port or place and the persons and merchandise including baggage, carried thereon, shall be subject to the laws and regulations applicable to vessels arriving or having arrived from any foreign prot or place, to the extent that such laws and regulations are administered by the Customs Service.

(R S. 251, as amended, section 624, 46 Stat. 759, section 644, 46 Stat. 761, section 904, 72 Stat. 787, section 1109, 72 Stat. 799, as amended (19 U.S.C. 66, 1624, 1644; 49 U.S.C. 1747, 1509).)

WILLIAM T. ARCHEY
(For Commissioner of Customs).

Approved: November 10, 1980.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[Published in the Federal Register December 3, 1980 (45 FR 80099)]

(T.D. 80-288)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 80-249 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Brazil cruzeiro:	
November 17–18, 1980	$0. 0163
People's Republic of China yuan:	
November 17, 1980	$0. 658848
November 18–19, 1980	. 654279
November 20, 1980	. 659544
November 21, 1980	. 656254
Hong Kong dollar:	
November 17, 1980	$0. 194894
November 18, 1980	. 195122
November 19, 1980	. 195733
November 20, 1980	. 196040
November 21, 1980	. 196406
Iran rial:	
November 17–21, 1980	Not available
Philippines peso:	
November 17–21, 1980	$0. 1324
Singapore dollar:	
November 17, 1980	$0. 476190
November 18, 1980	. 476985
November 19, 1980	. 477327
November 20, 1980	. 476985
November 21, 1980	. 477555
Thailand baht (tical):	
November 17–21, 1980	$0. 0485
Venezuela bolivar:	
November 17–21, 1980	$0. 2329

(LIQ-3-01 O:C:E)
Dated: November 21, 1980.

NANCY I. BROWN,
Chief,
Customs Information Exchange.

333-195 O - 80 - 4

(T.D. 80-289)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(C), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 80-249 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Austria schilling:

November 17, 1980	$0.073233
November 18, 1980	.073126
November 19, 1980	.073964
November 20, 1980	.073638
November 21, 1980	.073260

Belgium franc:

November 17, 1980	$0.032206
November 18, 1980	.032489
November 19, 1980	.032712
November 20–21, 1980	.032489

Denmark krone:

November 17, 1980	$0.168606
November 18, 1980	.170010
November 19–20, 1980	Quarterly
November 21, 1980	.169176

France franc:

November 17, 1980	$0.223464
November 18, 1980	.224820
November 19, 1980	Quarterly
November 20, 1980	.225479
November 21, 1980	.224467

Germany deutsche mark:

November 17, 1980	$0.517866
November 18, 1980	.521105
November 19, 1980	Quarterly
November 20, 1980	.522248
November 21, 1980	.521648

Ireland pound:	
November 17, 1980	$1.9320
November 18, 1980	1.9450
November 19, 1980	1.9550
November 20–21, 1980	1.9480
Italy lira:	
November 17, 1980	$0.001092
November 18, 1980	.001096
November 19, 1980	.001104
November 20, 1980	.001100
November 21, 1980	.001096
Netherlands guilder:	
November 17, 1980	$0.477441
November 18, 1980	.480307
November 19, 1980	Quarterly
November 20, 1980	.482393
November 21, 1980	.481348
Sri Lanka rupee:	
November 17–21, 1980	$0.058140
Switzerland franc:	
November 17, 1980	$0.575705

(LIQ-3-01 O:C:E)
Dated: November 21, 1980.

NANCY I. BROWN,
Chief,
Customs Information Exchange.

ERRATUM

In CUSTOMS BULLETIN, volume 14, No. 42, dated October 15, 1980, in T.D. 80-241, on page 4, change district to read New Orleans, La., not Nashville, Tenn.

United States Court of International Trade

(Slip Op. 80–3)

MERRY MARY FABRICS, INC., PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Fabrics of special construction—Velveteen—Velvet

Court No. 75–1–00260

COMMON AND COMMERCIAL MEANING

Generally, tariff terms are to be construed in accordance with their common and commercial meanings, which are presumed to be the same. *United States* v. *C. J. Tower & Sons of Buffalo, N.Y.*, 48 CCPA 87, C.A.D. 770 (1961).

LEGISLATIVE INTENT—AMBIGUITY

The basic rule in construing tariff acts is to interpret them so as to carry out the intent of Congress. *Brecht Corp.* v. *United States*, 25 CCPA 9, T.D. 48977, *cert. denied*, 302 U.S. 719 (1937) *S. & T; Imports, Inc.* v. *United States*, 78 Cust. Ct. 45, C.D. 4690 (1977). Where doubt or ambiguity exists as to the meaning of a statute it is proper for the court to consult legislative history to resolve the

issue. *United States* v. *Kung Chen Fur Corporation*, 38 CCPA 107, C.A.D. 447 (1951); *J. E. Bernard Co.* v. *United States*, 81 Cust. Ct. 60, C.D. 4766 (1978). While courts may not resort to legislative history or other extraneous matters to create an ambiguity, they may refer to such matters to support the validity of their conclusion. *United States* v. *J. E. Bernard & Co., Inc.*, 42 CCPA 69, C.A.D. 573 (1954).

Certain merchandise imported into the United States was classified by Customs as velvet under TSUS item 346.35. Importer contended it should be classified as velveteen under TSUS item 346.15 and alternatively, the requirements for the classification of velvet and velveteen are dual and that the imported merchandise should be classified instead under TSUS item 346.45 as "other" cotton fabrics.

HELD.

The evidence, legislative intent, and legal authority establish that the difference between velvet and velveteen is a matter having to do with the construction of the imported merchandise and that the imported merchandise was not shown to be improperly classified as velvet by Customs.

[Judgment for defendant.]

(Decided November 18, 1980)

Glad, Tuttle & White (*Robert Glenn White* at the trial and on the briefs) for the plaintiff.

Alice Daniel, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*Jerry P. Wiskin* at the trial and on the brief), for the defendant.

Lamb & Lerch (*David A. Golden* at the trial) amicus curiae.

LANDIS, Judge: This action was tried before me at Los Angeles, California, and involves the classification of a cotton pile fabric which originated in the People's Republic of China, was shipped to Hong Kong and exported subsequently from Hong Kong to the United States in May 1972.

Customs officials classified the fabric as velvet under the Tariff Schedules of the United States (TSUS) item 346.35, dutiable at 70 per centum ad valorem.[1]

Plaintiff contends that the fabric is properly classifiable as plain-back velveteen, dutiable at 31.25 per centum ad valorem pursuant to TSUS item 346.15. Alternatively, plaintiff contends that the fabric in issue is neither velvet nor velveteen and is classifiable as other cotton pile fabrics under TSUS item 346.45, dutiable at 40 per centum ad valorem.

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[1] Pursuant to headnote 3(e) of the General Headnotes and Rules of Interpretation of TSUS (1972), the appropriate rate is that stated in col. 2 of the items of the tariff schedules in issue. Nondiscriminatory treatment to the products of the People's Republic of China has been granted only recently pursuant to Presidential Proclamation 4697, dated Oct 23, 1979, which amended headnote 3(f) effective Feb 1, 1980, following adoption of a concurrent resolution by Congress on Jan. 24, 1980.

At trial,[2] plaintiff urged that if the merchandise ultimately was deemed velvet, the proper rate of duty should be 62½ and not 70 per centum ad valorem, which additional claim this court directed at trial should be reduced to writing. Plaintiff has now abandoned this contention but has not abandoned the alternative contention that the imported textile is neither velveteen nor velvet, but rather other cotton pile fabrics under TSUS item 346.45.

The pertinent provisions of TSUS relative to the respective classification made by Customs and claimed by plaintiff and the duty assessments thereunder appear in subpart A, part 4, schedule 3, and are as follows:

SCHEDULE 3.—TEXTILE FIBERS AND TEXTILE PRODUCTS

* * * * * * *

PART 4.—FABRICS OF SPECIAL CONSTRUCTION OR FOR SPECIAL PURPOSES; ARTICLES OF WADDING OR FELT; FISH NETS; MACHINE CLOTHING

* * * * * * *

Subpart A.—Knit, Pile, Tufted, and Narrow Fabrics; Braids, and Elastic Fabrics

* * * * * * *

Pile fabrics, in which the pile was inserted or knotted during the weaving or knitting, whether or not the pile covers the entire surface, and whether the pile is wholly or partly cut or is not cut:

Of cotton:

* * * * * * *

[*Claimed under:*]

Velveteens:

346.15	Plain-back	31.25% ad val.

* * * * * * *

[*Classified under:*]

346.35	Velvets, plushes, and velours	70% ad val.

* * * * * * *

[*Alternatively claimed under:*]

346.45	Other	40% ad val.

[2] At the commencement of the trial the court granted plaintiff permission to amend its complaint setting forth a third cause of action based upon the theory that Congress has not legislated a duty for cotton velvet in excess of 62½ per centum ad valorem and that the 70 per centum ad valorem duty was a result of Presidential Proclamation 2019 (T.D. 46048). The amendment further contends that this Proclamation was abrogated by T.D. 51802 which itself has not been abrogated thereby reinstating the Presidential Proclamation and the higher ad valorem rate for velvet. This third cause of action was withdrawn specifically by plaintiff by a statement to that effect in its opening brief.

Seven witnesses testified during the course of the trial.

Plaintiff's four witnesses either were buyers or sellers of fabrics including velvet and velveteen or utilized or had experience with velvet and velveteen in production of wearing apparel. Each of such witnesses of plaintiff testified the imported merchandise was velveteen. Their main criteria for determining the difference between velvet and velveteen was the feel of the fabric, the direction of the pile, the drape of the fabric, the method of shipping the fabric, the reputation of the company from whom they were purchasing the fabric and the different uses of the fabric. None of plaintiff's witnesses possessed a technical knowledge or background in the manufacturing of velvet or velveteen.

Two of defendant's witnesses were associated with Crompton Co. which at the time was the sole domestic producer and manufacturer of velveteen. William Cooke was Crompton's corporate director of fabric development. Wayne Snyder was corporate director of energy conservation and water management of said company and was formerly director of research for Crompton. These witnesses testified in substance that a stipulated portion of the imported merchandise was velvet and that the difference between velvet and velveteen is essentially in the construction of the fabrics. These two witnesses for defendant testified to the effect that the imported merchandise contains a warp thread and a filling thread, and that the difference is that velvet contains an additional warp thread forming the pile, while velveteen contains an additional filling thread forming the pile. Both witnesses possessed good credentials and a strong background in the manufacturing of the fabrics. Defendant's remaining witness was basically a jobber of merchandise whose testimony was relatively useless.

Initially, the court must determine the appropriate test for the classification of the fabric in issue. Plaintiff urges that classification should be based upon the common meaning and understanding attributed to the imported merchandise by those who are engaged in buying and selling the merchandise in trade and commerce. No separate commercial designation having been alleged or proven, defendant argues that the imported merchandise should be classified in accordance with the common meaning accorded the terms velvet and velveteen by the manufacturers of such textiles who make most of the sales. Plaintiff's argument is essentially one directed to the external appearance and general outward physical characteristics of the completed fabric such as feel, handling and its less luxurious effect, while defendant's argument is one of construction.

The basic rule in construing tariff acts is to interpret them so as to carry out the intent of Congress. *Brecht Corp.* v. *United States.* 25 CCPA 9, T.D. 48977, *cert. denied*, 302 U.S. 719 (1937); *S & T*

Imports, Inc. v. *United States*, 78 Cust. Ct. 45, C.D. 4690 (1977). Where doubt or ambiguity exists as to the meaning of a statute it is proper for the court to consult legislative history to resolve the issue. *United States* v. *Kung Chen Fur Corporation*, 38 CCPA 107, C.A.D. 447 (1951); *J. E. Bernard Co.* v. *United States*, 81 Cust. Ct. 60, C.D. 4766 (1978). While courts may not resort to legislative history or other extraneous matters to create an ambiguity, they may refer to such matters to support the validity of their conclusion. *United States* v. *J. E. Bernard & Co., Inc.*, 42 CCPA 69, C.A.D. 573 (1954). Generally, tariff terms are to be construed in accordance with their common and commercial meanings, which are presumed to be the same. *United States* v. *C. J. Tower & Sons of Buffalo, N.Y.*, 48 CCPA 87, C.A.D. 770 (1961). Congress is presumed to know the language of commerce and to have framed the tariff acts so as to classify commodities according to the general usage and denomination of the trade. *Nylos Trading Company* v. *United States*, 37 CCPA 71, C.A.D. 422 (1949).

The primary source for the determination of legislative intent is the statutory language itself. *United States* v. *Gulf Oil Corporation, et al.*, 47 CCPA 32, C.A.D. 725 (1959). Of particular significance in the instant case is the fact that both velvet and velveteen are enumerated under the same heading as pile fabrics, etc. The term pile fabrics is a term defined by its basic construction. Webster's Third New International Dictionary (1966), which has been cited by plaintiff in its original brief, defines pile as:

> * * * a mass of raised loops or tufts covering all or part of a fabric or carpet that is formed by extra warp or weft yarns during the weaving and that produces a soft even compact furry or velvety surface.

A standard industry lexicon, also cited by plaintiff in its original brief, namely, Fairchild's Dictionary of Textiles, defines pile as:

> * * * Raised loops, cut interlacings of double cloths or tufts (cut loops), and other erect yarns or fibers deliberately produced on cloth, which form all or part of the surface of the fabric. May be warp pile, filling pile or knotted pile, and may be loops produced by weaving an extra set of yarns over wires which are drawn out of the fabric as weaving progresses.

Both said standard dictionary and industry lexicon define pile in terms of the act of combination of the component parts to form the end result of an integrated object. The term construction is similarly defined by Webster's, supra, as: "* * * 2a. the act of putting parts together to form a complete integrated object". It necessarily follows that where fabrics are enumerated under a heading which is by definition a term of construction, then the legislature in listing the fabrics

under that heading is classifying them according to their construction and not according to the appearance of the end result. No contrary interpretation of the statutory language has been proffered by plaintiff nor has the court on its own research uncovered a different result.

Congressional intent as evidenced by the legislative history of this particular classification and judicial interpretation is completely in accord with the construction theory test for velvet and velveteen. As early as 1890 these fabrics were classified together with all pile fabrics composed of cotton or other vegetable fibers, etc., Tariff Act of 1890 (26 Stat. 567). However, legislative history, based upon discussion in Congress, is silent as to the meaning of velvet and velveteen under the 1890 act.

Subsequent tariff legislation likewise sheds no light on the difference between velvet and velveteen except that they are considered to be pile fabrics.[3]

In anticipation of a general revision of the Tariff Act of 1913, the House Ways and Means Committee commissioned the U.S. Tariff Commission to prepare a summary of the current tariff information for the committee's use in revising the 1913 act. The result was the "Summary of Tariff Information, 1920." [4] This summary described pile fabrics:

> *Pile fabrics* are distinguished from all other woven articles by their surface, which shows a series of short ends or loops issuing from the cloth and usually concealing the interlacing of the wrap and filling. They are of two kinds—warp piles made with two warps and one filling, producing *velvet* and *plush;* and filling piles made with two fillings and one warp, producing such goods as *velveteen* and *corduroy.*

The "Summary of Tariff Information, 1929," prepared for the Ways and Means Committee in expectation of revision of the tariff Act of 1922, which resulted in the passage of the Tariff Act of 1930, described "Cotton Pile Fabrics and Manufacturers of":

> A pile fabric consists of a foundation cloth covered in whole or in part by short projecting ends or loops produced in the weave with an extra set of threads. Technically, pile fabrics are divided according to method of construction into two classes: (1) Filling piles, such as velveteen and corduroy, and (2) warp piles, such as velvet, plush, and terry-woven, fabrics. In all cases the founda-

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[3] Tariff Acts of: 1894, 28 Stat. 509; 1897, 30 Stat. 151; 1905, 33 Stat. 928 (Philippine Trade Act); 1909, 36 Stat. 11; and 1913, 38 Stat. 114.

[4] It is judicially well settled that summaries of tariff information specially prepared for the use of congressional committees considering tariff proposals have long been recognized as authoritative for the purpose of resolving questions relating to the meaning and scope of terms which appear in tariff acts and in ascertaining congressional intent. *Keith Dunham Co.* v. *United States*, 26 CCPA 250, C.A.D. 24 (1938); *Sandoz Chemical Works, Inc.* v. *United States*, 43 CCPA 152, C.A.D. 625 (1956).

This court is of course mindful of the statement of Judge Rich in *Hawaiian Motor Company* v. *United States*, 67 CCPA ——, C.A.D. 1241, 617 F. 2d 286 (1980) as to summaries of trade and tariff information not being suitable for use as evidence of congressional intent in all cases.

> tion fabric requires its own set of warp and filling threads, and the pile, whether warp or filling, is made from an additional set of threads. Filling pile is always cut, whereas warp pile may be either cut or loop (uncut).

These two summaries are the leading indicators of legislative intent as to the classification of pile fabrics.[5] Moreover, they succinctly define velvet and velveteen as being pile fabrics constructed in a special way, the difference between the two being whether the extra thread used in construction is of warp quality or filling quality.

Recent judicial interpretation also indicates that construction is the pivotal element in the classification of velvet and velveteen. In *Tilton Textile Corp.* v. *United States*, 77 Cust. Ct. 27, 29, C.D. 4670, 424 F. Supp. 1053, *aff'd*, 65 CCPA 18, C.A.D. 1199, 565 F. 2d 140 (1977), this Court stated:

> Summarizing our conclusions at the outset, we find that, *for tariff classification purposes, velveteen must have a certain characteristic weave* or construction, described *infra*, and a raised pile, which may be wholly or partly cut or not cut, issuing from the fabric and covering its surface at least in part. * * * [Italic added.]

The court then proceeded to define what it meant by this certain characteristic weave:

> The testimony of record conflicts on several points; however, it is not disputed that a common denominator of all pile fabrics is their construction, which consists of a foundation cloth made of warp and filling threads, and an extra set of threads, which may be warp or filling yarns, which form the pile. Essentially, there are two types of pile fabrics; *warp pile fabrics, such as velvet*, plush and terry fabrics, *which are constructed with an additional set of warp threads*; and *filling pile fabrics, such as velveteen* and corduroy, *which are constructed with* an extra set of *filling yarns*. [Italic added.] [Footnotes omitted not being germane to any arguments advanced by plaintiff or defendant.]

To date this is the most declarative judicial pronouncement indicating that the classification of pile fabrics is based solely upon the construction of said fabric and that the individual pile fabric, in turn, is classifiable according to its construction.

In accordance with the evidence, the legislative history, and the

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[5] There is no significant statement of legislative intent subsequent to the "1929 Summary of Tariff Information." The "Summary of Tariff Information (1948)" merely advises that there are two groups of velveteen, plain-back and twill-back, and singularly defines both as cotton velveteens which "* * * are filling-pile fabrics in which part of the filling is cut to form a pile which spreads uniformly over the entire surface of the fabric."

The Tariff Classification Act of 1962 classified separately velvet and velveteen yet the "Tariff Classification Study—Explanatory and Background Materials, Schedule 3 (November 1960)" does not indicate the legislative intent for such classification. It merely reiterates by implication that velvet and velveteen are classified as pile fabrics. The indepth analysis of the earlier tariff summaries has not been controverted and remains as a viable indicator of legislative intent.

legal authority, it is this court's determination that the construction test determines the classification of velvet and velveteen.

In any event, plaintiff has wholly failed to sustain its burden of proving that the Government's classification is in error and that its own claimed classification is correct. See: *Hawaiian Motor Company* v. *United States*, 82 Cust. Ct. 70, C.D. 4790, 473 F. Supp. 787 (1979), *aff'd*, 67 CCPA ——, C.A.D. 1241, 617 F. 2d 286 (1980); *Schott Optical Glass, Inc.* v. *United States*, 82 Cust. Ct. 11, C.D. 4783, 468 F. Supp. 1318, *aff'd*, 67 CCPA——, C.A.D. 1239, 612 F. 2d 1283 (1979); *Edge Import Corp.* v. *United States*, 83 Cust. Ct. 140, 484 F. Supp. 906 (1979).

There remains only the issue raised by plaintiff that the requirements for the classification of velvet and velveteen are dual in that the fabric must have a certain weave construction and have certain physical properties giving an outward appearance of velvet and velveteen, and are therefore classifiable as other cotton fabrics. The court concludes this contention to be meritless in view of the evidence, legislative history, and legal authority previously discussed. Also, in regard to said contention plaintiff has wholly failed to sustain its burden of proving the Customs classification is in error and its own claimed classification is correct. Id.

Accordingly the classification of the district director of customs at the port of Los Angeles is sustained and the complaint of plaintiff is, in all respects, dismissed.

Judgment will enter accordingly.

(Slip Op. 70–4)

ROYAL LONDON LTD., DIV. GLOBE NOVELTY HOUSE, PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Memorandum Opinion and Order

Court No. 77–2–00229

(Dated November 20, 1980)

LANDIS, Judge: Plaintiff moves for judgment on the pleadings pursuant to rule 4.9.[1] Defendant cross-moves for summary judgment pursuant to rules 4.12 and 8.2. Plaintiff further moves to exclude and strike certain portions of defendant's pleadings and for further time

[1] The previous rules of the U.S. Customs Court (1970), as amended, are referred to herein in accordance with rule 1(b) of the present rules (1980) of the U.S. Court of International Trade.

to respond pursuant to rule 4.9. These motions are consolidated for purposes of disposition herein.

The parties now agree that Customs classification of the articles in issue under TSUS item 204.40 is erroneous. Defendant states that it intends to abandon its reliance upon the liquidated classification. Plaintiff argues that it is relying upon the admissions manifest in the answer and the presumption of correctness of each part of the liquidated classification to sustain its motion for judgment on the pleadings and urges that defendant should formally amend its answer to clearly state the abandonment of that classification. Defendant insists that the abandonment is technical in nature and that the service of an amended complaint with the concomitant result of necessitating the denial or continuance of the summary judgment motion would delay the proceedings.

Plaintiff's position that it is patently unfair to expect it to respond to such an omnibus motion is sound. The objective of filing an amended pleading is not simply to apprise the court and the pleader's adversary as to a change in position, but also to present in a clear, comprehensive and unified manner the most current form of the pleader's allegations without the necessity of referring back to the original or prior pleadings submitted in the action, which could cause confusion. *Webcor Electronics, Div. of U.S. Industries, Inc.* v. *United States*, 79 Cust. Ct. 177, C.R.D. 77–12 (1977).

In this action, defendant should be required to serve an amended answer which, pursuant to rule 8(c), clearly states its position within the four corners of the document. Defendant makes no showing of prejudice resulting from following the standard procedural perspective. Appositely, plaintiff is confronted with a situation where its motion addressed to the pleadings may be moot and that summary judgment on the heretofore unexplored alternative claim may be granted against it.

Accordingly, it is ORDERED that:

1. Defendant's cross-motion is granted only to the extent that it serve and file an amended answer within 30 days of date of this decision. In all other respects the cross-motion is denied without prejudice to renewal upon completion of service and filing of the amended answer.

2. Plaintiff's motion for judgment on the pleadings is denied without prejudice to renewal upon service and filing of the amended answer.

3. Plaintiff's motion to exclude and strike portions of defendant's pleadings and for further time to respond is denied as moot.

(Slip Op. 80–5)

ASAHI CHEMICAL INDUSTRY COMPANY, LTD., ET AL., PLAINTIFFS, *v.* UNITED STATES, DEFENDANT, AMERICAN YARN SPINNERS ASSOCIATION, INTERVENORS

Memorandum Opinion and Order

Court Nos. 80–5–00755–S and 80–5–00755

(Dated November 20, 1980)

RAO, Judge: This is a civil action by three Japanese companies, Ashai Chemical Industry Co., Ltd., Japan Exlan Co., Ltd. and Mitsubishi Rayon Co., Ltd., seeking judicial review of the determination of the U.S. International Trade Commission (hereinafter Commission) that an industry in the United States is being materially injured because of imports of spun acrylic yarns from Japan, sold at less than fair value, by reason of which they were named in an antidumping duty order of April 9, 1980. On August 13, 1980, the American Yarn Spinners Association (hereinafter AYSA) filed a motion for leave to intervene as a party-defendant, which motion was granted on September 22, 1980.

On that day, defendant United States filed a motion for a protective order for part of the administrative record filed with this court, to wit: documents Nos. 1, 2, and 3 in list No. 3, privileged documents transmitted to the U.S. Customs Court. Document No. 1 is an undated, four-page pros and cons statement prepared by the Commission's staff setting forth suggested criteria to be used, as well as possible reasons for and against an affirmative injury determination. Document No. 2 is an undated, four-page draft opinion entitled "Draft Affirmative * * *" prepared by the Commission's staff for the consideration of and use by the Commissioners in arriving at their statement of reasons in the investigation involved herein. Document No. 3 is an undated, three-page draft opinion entitled "Draft Negative * * *" similar to Document No. 2, but arriving at different conclusions. Attached to the motion of the United States is the affidavit and claim of privilege of Bill Alberger, Chairman of the Commission, stating that he had personally reviewed the documents and that they are internal communications prepared solely for the use of the Commissioners and staff members containing advisory opinions, conclusions, considerations, deliberations and recommendations.

On October 3, 1980, plaintiffs Japan Exlan Co., Ltd. and Mitsubishi Rayon Co., Ltd., filed a memorandum in opposition to the motion for a protective order, the basis of which is that since none of the

parties have attempted to gain access to the documents, the motion is premature. On the same day, plaintiff Asahi Chemical Industry Co., Ltd., moved for limited discovery which would allow its attorneys to examine the information contained in the documents for purposes of this litigation, but forbidding further disclosure to any other persons.

On October 23, 1980, intervenor AYSA filed a memorandum in opposition to plaintiff Asahi's motion for limited discovery on the grounds that the documents in question are not properly part of the record for judicial review of an antidumping determination and, alternatively, that they are privileged and irrelevant.

Taking first plaintiffs Japan Exlan Co., Ltd.'s and Mitsubishi Rayon Co., Ltd.'s opposition to the motion for a protective order, I am constrained by rule 6.1(c)(4) of this court to hold that defendant's motion is not premature.[1] The plain language of the rule is to the effect that any party may move for a protective order and that the court may make any order which justice requires without any limitation as to when a protective order may be granted. Additionally, *Henkel Corporation et al.* v. *United States*, 85 Cust. Ct. ——, C.R.D. 80–15, (1980), involved a defendant's motion for a protective order prior to plaintiffs' request for production. Judge Ford granted the protective order despite the fact that no demand had been made for the "pros and cons" statement sought to be held privileged.

In *SCM Corporation* v. *United States* (*Brother International Corporation, Party-in-Interest*), 82 Cust. Ct. 351, C.R.D. 79–11, 473 F. Supp. 791 (1979), this court was asked for a protective order for nine documents, including a pros and cons statement; a four-page draft opinion entitled "Statement of Reasons for Negative Determination * * *"; and a four-page draft opinion entitled "Statement of Reasons for Negative Determination * * *," among others. If the claim of privilege in the instant case is properly invoked, *SCM Corporation* must be considered precedent and the protective order granted, since the documents involved herein are similar to those the subject of the protective order granted in *SCM Corporation*.

To be properly invoked, the claim of executive privilege must be

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[1] Rule 6.1(c) protective orders: Upon motion by any party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burder on expense, including, but not limited to, one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

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formally claimed, must be asserted by the head of the agency who personally considered the matter, the materials must be reviewed, and an appropriate affidavit must be submitted in support of the claim. See *SCM Corporation* v. *United States*, *supra*, and *Sprague Electric Company* v. *United States* (*Capar Components Corp., Party-in-Interest*), 81 Cust. Ct. 168, 462 F. Supp. 966 (1978). It has been judicially determined that the Chairman of the International Trade Commission is authorized to examine documents with the expertise to invoke a proper claim of privilege. *Sprague Electric Company*, *supra*. An appropriate affidavit by the Chairman was submitted in support of the claim for privilege, in which he swears that he personally considered the matter and reviewed the materials. No objection to the form or content of the affidavit has been made by any of the parties opposing the grant of a protective order. Additionally, examination by the court of documents 1, 2, and 3 of list 3 in camera leads me to conclude that the averments of the affidavit are factual, and that the documents comprise part of the process by which the Commission's decision was formulated.

For the above reasons, it is,

ORDERED that documents 1, 2, and 3 on list No. 3, part of the administrative record previously transmitted to the Court, are hereby recognized as privileged documents, not subject to discovery or disclosure.

(Slip Op. 80–6)

ROYAL BUSINESS MACHINES, INC., PLAINTIFF, *v.* UNITED STATES, PHILIP M. KLUTZNICK, SECRETARY OF COMMERCE; ROBERT E. HERZSTEIN, UNDER SECRETARY OF COMMERCE FOR INTERNATIONAL TRADE, DEPARTMENT OF COMMERCE; ROBERT E. CHASEN, COMMISSIONER OF CUSTOMS AND, JOHN E. BRADY, DISTRICT DIRECTOR OF CUSTOMS, LOS ANGELES, CALIF., DEFENDANTS

Memorandum to Accompany Order Granting Plaintiff's Application for Temporary Restraining Order

Court No. 80–11–00056

[Plaintiff's application for temporary restraining order granted.]

(Dated November 20, 1980)

Rode & Qualey, Esqs. (*Michael S. O'Rourke* and *Patrick D. Gill*, Esqs., of counsel) for the plaintiff.

Alice Daniel, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, and *Velta A. Melnbrencis*, Assistant Branch Director, Esqs., for the defendants.

NEWMAN, Judge: Plaintiff has applied for a temporary restraining order (TRO) and injunctive relief pursuant to Rule 65 of the Court, and for a writ of mandamus.[1] This memorandum is addressed solely to plaintiff's application for a TRO, which for the reasons indicated herein is granted.

Plaintiff seeks the TRO in the instant action directing the defendants to abstain from modifying, or in any way altering, the antidumping duty order issued by the Department of Commerce (Commerce) and published in the Federal Register on May 9, 1980 (45 F.R. 30618–19); and also directing the defendants to suspend or withhold liquidation of all customs entries covering the Royal Administrator, a typewriter manufactured in Japan by Silver-Seiko, Ltd., and imported by plaintiff.

Briefly, the factual basis of the present dispute, as disclosed by the verified complaint and an affidavit of plaintiff's counsel, which for present purposes we will accept in their most favorable light, follows: On May 9, 1980, an antidumping duty order issued by Commerce was published in the Federal Register (45 F.R. 30618–19) The order announced that Commerce had determined that portable electric typewriters from Japan were being sold at less than fair value and that such sales were materially injuring an industry in the United States within the meaning of the antidumping law; and further described the class or kind of merchandise covered by the antidumping duty order as portable electric typewriters as provided for in item 676.0510, Tariff Schedules of the United States Annotated. Subsequently, on August 7, 1980, the U.S. Customs Service issued a ruling holding that plaintiff's Royal Administrator is not classifiable under item 676.0510, but rather is properly classifiable under item 676.0540, TSUSA, and hence the Royal Administrator is not within the scope of Commerce's antidumping duty order.

Plaintiff further avers, on information and belief, specifically as a result of several conferences with named officials of Commerce, that Commerce intends to modify or alter the antidumping duty order published on May 9, 1980, so as to include the Royal Administrator. Plaintiff fears that nay such modification or alteration of the antidumping duty order published on May 9, 1980, would result in irreparable harm in that plaintiff will be deprived of its right of judicia' review under section 516A (19 U.S.C. 1516a).

Rule 65(b) of this court provides that a TRO may be granted where it clearly appears that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition. Plainly, irreparable harm will occur to plaintiff if the antidumping duty order of May 9, 1980, is

[1] Filed at 1 p.m. of Nov. 18, 1980, and oral argument commenced in chambers at 3:30 p.m. of that day.

modified or altered to include plaintiff's Royal Administrator typewriter; if Commerce's action is not subject to judicial review; and if plaintiff will be deprived of its right to contest antidumping duty ass ssments when the liquidition of entries currently held by Customs are liquidated. *Cf. Industrial Fasteners Group, American Importers Association* v. *United States, et al.*, 85 Cust. Ct. ——, C.R.D. 80–8, 495 F. Supp. 911 (1980).

During the conference, oral argument was held, and counsel for defendants did not dispute plaintiff's contention that a modification of the antidumping duty order would deprive plaintiff of its right of judicial review under section 516A. However, defendants' counsel vigorously opposed the granting of a TRO. The main thrust of Ms. Melnbrencis' argument was that she had received assurances from Commerce that no modification of the May 9, 1980 antidumping duty order would be pulbished until the parties have had an opportunity to brief the matter, and the court has had an opportunity to hear whatever oral argument there is (Tr. oral arg. 13). In essence, defendant's position is that since Commerce is willing to voluntarily withhold any action with regard to any modification or alteration of the final antidumping duty order which was published by Commerce in the Federal Register on May 9, 1980, until the court has considered the issues, a TRO would be unnecessary and improper.

I am unable to agree with defendant's argument. Commerce's present intention to voluntarily withhold publication of any order modifying or altering the antidumping duty order published on May 9, 1980, assuredly cannot accord plaintiff the protection intended to be conferred by the issuance of a TRO under rule 65(b). Indeed, while I have no quarrel with counsel for defendants personal representation that she has been assured by Commerce (viz, David Amerine, Esq., Office of General Counsel) that Commerce will voluntarily refrain from publishing any modification of the final antidumping duty order, the blunt fact is that the Government official involved may revise his view, or be superseded in some fashion, or leave Government employ, or any of several other potential contingencies that can develop. Accordingly, under all the facts and circumstances, plaintiff's application for a TRO is granted, which TRO will preserve the status quo. Inasmuch as Commerce does not presently intend to modify its antidumping order of May 9, 1980, no security shall be required at this time.

At the conference of November 18, 1980, the court allowed defendants' request to file opposing papers by November 25, 1980, respecting the TRO or on any other subject, and to file an opposing memorandum concerning plaintiff's application for temporary in-

junction and writ of mandamus by December 10, 1980. Plaintiff was granted 10 days in which to reply to defendant's memorandum.

ROYAL BUSINESS MACHINES, INC., PLAINTIFF, *v.* UNITED STATES, ET AL., DEFENDANTS

Temporary Restraining Order

Court No. 80-11-00056

(Dated November 20, 1980)

NEWMAN, Judge. Upon reading and filing plaintiff's application for temporary restraining order, the affidavit of counsel in support of issuance of the temporary restraining order, the summons, verified compliant, motion for preliminary injunction and writ of mandamus, and memorandum in support thereof, and upon all other papers and proceedings had herein, including the hearing on November 18, 1980, attended by counsel for the named parties, it clearly appearing:

(1) That immediate and irreparable injury, loss, or damage will result to the applicant before all possible interested parties or their attorney(s) can be heard in opposition to this Application; and

(2) That the injury suffered by plaintiff as the result of a modification or alteration by the Department of Commerce of its antidumping duty order dated May 9, 1980 (45 F.R. 30618-19), will be irreparable because such modification or alteration, if it is allowed to occur, will deprive plaintiff of any effective judicial review of the Department of Commerce's action; and

(3) That further injury will be suffered by the assessment of antidumping duties in accordance with the final antidumping duty order, supra, by the U.S. Customs Service in the act of liquidation of affected entries, and that such action may not be susceptible to the administrative protest and would be irrecoverable even if the determination by the International Trade Administration, Department of Commerce is held to be invalid by this Court; and

(4) That plaintiff will have no means of contesting the legitimacy of the modification or alteration of the antidumping duty order and, subsequently, will lack the ability to contest the legitimacy of antidumping duty assessments when the liquidation of the entries currently held by the U.S. Customs Service are liquidated; and

(5) That restraint of such modification or alteration of the antidumping duty order will preserve the status quo until there is an opportunity to hold a hearing on the application for a preliminary injunction and writ of mandamus and currently filed, and that such restraint will cause no harm to adverse parties, it is hereby

ORDERED that the defendants herein, together with their delegates and all other officers, agents, servants, and employees of the U.S. Department of Commerce shall be and they are restrained from the modification or alteration of the final antidumping duty order issued by the Department of Commerce and published in the Federal Register on May 9, 1980 (45 F.R. 30618–19), and it is

FURTHER ORDERED that the defendants herein together with their delegates and all other officers, agents, servants, and employees of the U.S. Customs Service shall be and they are restrained from the liquidation of any and all entries or withdrawals from warehouse for consumption of the Royal Administrator typewriter manufactured in Japan, and it is

FURTHER ORDERED that defendant may file opposing papers by November 25, 1980, respecting this order or on any other subject and file an opposing memorandum concerning plaintiff's application for a temporary injunction and writ of mandamus by December 10, 1980. Plaintiff may reply to defendants' memorandum within 10 days of its service.

FURTHER ORDERED that plaintiff's motion for preliminary injuction is set down for hearing before this court on December 30, 1980, at 10:30 a.m., and it is

FURTHER ORDERED that this order shall expire 10 days from the date of entry of the same unless extended for good cause shown.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decision

DEPARTMENT OF THE TREASURY, *November 24, 1980.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P80/182	Newman, J. November 21, 1980 (amends decision and judgment of 10/15/80 [Abs. P80/157])	Keystone d/o Berkey Photo, Inc., et al.	72-8-01859, et.	Item 722.34 10%	Item 722.75 4.5% or other applicable rate of duty, depending upon year of entry	Amended decision and judgment on agreed statement of facts	New York Photographic light meters and photographic meter assemblies

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, attention: Legal Reference Area, room 2404, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. These copies will be made available at a cost to the requester of 10 cents per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Decisions listed in earlier issues of the CUSTOMS BULLETIN, through July 2, 1980, are available in microfiche format at a cost of $23.85 ($.15 per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Reference Area. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: November 25, 1980.

MARVIN M. AMERNICK,
Acting Director,
Regulations and Information Division.

Date of decision	File No.	Issue
11- 4-80	104407	Vessel repair: Whether relief from duty on the cost of repairs to Lash barges warrants remission when statements contain only general information concerning the repairs
11- 5-80	104923	Vessels: Whether a proposed cruise itinerary for stops at Canadian ports and Alaskan ports would be in violation of coastwise transportation of passengers on a foreign vessel
11-31-80	104924	Containers: Whether repositioning cargo containers between U.S. ports on foreign-flag vessels is in violation of coastwise transportation of merchandise in other than coastwise-qualified vessels
11-13-80	542197	Valuation: Which of two price lists should be used as the basis of foreign value of chucks for machine tools
11-31-80	713339	Entry: Whether the Immediate Delivery Procedure in lieu of the new expedited entry procedure may be extended for the entry of merchandise
11-12-80	714319	Country-of-origin marking: Wire mesh cable grip subassemblies
10-30-80	055739	Generalized system of preferences: Explanation of the term product of a beneficiary developing country (BDC)
6-23-80	061781	Classification: Decorative fabrics (807.00)
9-18-80	062786	Classification: Bicycle headlamp (683.70)
10-10-80	064228	Classification: Forging die blocks and molds (649.49, 680.12, 680.13)
10-17-80	064359	Classification: Access flooring components consisting of modular panels, understructures, and rolls of steel (657.25, 207.00, 389.50, 607.83)
10-10-80	064528	Classification: Sample bra (376.24)
10-30-80	064837	Classification: Rifled tubing (660.10, 660.15, 610.32, 610.37, 610.49, 610.52, 606.00, 606.02)
10- 9-80	065180	Classification: Whether miniature trucks and cars are classified as models or toys (737.15)
10- 6-80	065238	Classification: American selling price; ladies yarn slippers (700.60)
10-24-80	065287	Classification: Metal containers (657.25)
10- 9-80	065363	Classification: Stepper motor with lead screw (682.25)
10-17-80	065368	Classification: Aqua action game (735.20)
10-30-80	065371	Classification: Computone paper (252.75)
10- 6-80	065376	Classification: Modular panels or screens in chief value of plastic or steel (774.60, 657.25)
10-30-80	065402	Classification: Fur apres-ski boots (700.60)
10-30-80	066051	Classification: Jackets, designed for and worn by cyclists (382.58)
10-23-80	066166	Classification: Manmade fiber yarn (310.60)
9- 7-80	066185	Classification: Bar code-checker, bar code verifier, office machines (676.30, 688.45)

Date of decision	File No.	Issue
10–30–80	066291	Classification: Fruit preserves (146.82, 146.85, 153.04)
9–18–80	066451	Classification: Whether certain labels attached to garments constitute ornamentation
10–10–80	066487	Classification: Well screens, stainless steel (657.25)
10– 8–80	066492	Classification: Barrier impenious stockinet (389.70, 386.50, 389.62)
10–30–80	066497	Classification: Spaghetti ruler, pasta tester (772.15)
11– 6–80	066508	Classification: Boot cover for a roller skate (389.40)
10–17–80	066532	Valuation: American selling price; women's casual shoes (700.60)
11– 6–80	066544	Classification: Burglar alarm used in vehicles (685.90)
10–10–80	066568	American selling price: Women's footwear (700.60)
11–13–80	066784	Classification: Whether certain types of labels attached to karate uniforms in a visible location would constitute ornamentation

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, *December 4, 1980*

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of CERTAIN MASS FLOW DEVICES AND COMPONENTS THEREOF	Investigation No. 337–TA–91

Notice of Investigation

Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 14, 1980, and amended on October 31, 1980, November 5, 1980, and November 12, 1980, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Tylan Corp., 19220 South Normandie Avenue, Torrance, Calif. 90220, alleging that unfair methods of competition and unfair acts exist in the importation into the United States of certain mass flow devices and components thereof, or in their sale, by reason of: (1) Infringement by such mass flow devices of claims 1–5 and 7–10 of U.S. Letters Patent 3,650,505, claims 1–10 of U.S. Letters Patent 3,851,526, and claims 1–5 of U.S. Letters Patent 3,938,384; (2) misappropriation of trade secrets; (3) misappropriation of trade dress; (4) misappropriation of trade nomenclature; and (5) passing off. The amended complaint (hereinafter referred to as the complaint) alleges that the effect or tendency of the unfair methods of competiton and unfair acts is to substantially injure an industry, efficiently and economically operated, in the United States.

Complainant requests permanent exclusion from entry into the United States of the imports in question after a full investigation, or, alternatively, that a cease and desist order be issued.

Having considered the complaint, the Commission, on November 13, 1980, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), an investigation be instituted to determine whether there is a violation of subsection (a) of this section in the unlawful importation of certain mass flow devices, components thereof, and products incorporating said devices into the United States, or in their sale, by reason of the alleged—

(a) infringement by such mass flow devices of—
(i) claims 1–5 and 7–10 of U.S. Letters Patent 3,650,505,
(ii) claims 1–10 of U.S. Letters Patent 3,851,526, and
(iii) claims 1–5 of U.S. Letters Patent 3,938,384, and

(b) unfair conduct comprising any one or a combination of—
(i) misappropriation of trade secrets,
(ii) misappropriation of trade dress and/or trade nomenclature, and
(iii) passing off,

the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—
Tylan Corp.
19220 South Normandie Avenue
Torrance Calif. 90220

(b) The respondents are the following companies alleged to be involved in the unlawful importation of such mass flow devices, components thereof, and products incorporating said devices into the United States, or in their sale, and are the parties upon which the complaint shall be served:

Advanced Semiconductor Materials, B.V.
Soestdijkseweg 328
Bilthoven
The Netherlands

Advanced Semiconductor Materials America, Inc.
4302 East Broadway Road
Phoenix, Ariz. 85040

(c) Talbot S. Lindstrom, Chief, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street

NW., Washington, D.C. 20436, shall name the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Chief Administrative Law Judge Donald K. Duvall, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

The phrase "and products incorporating said devices" has been added to paragraphs (1) and (2)(b) above on the basis of informal investigatory activities by the Commission which revealed that mass flow devices of the type alleged to be involved in the aforesaid unfair acts can be imported as mass flow devices, components thereof, and products incorporating said devices.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of the time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for the confidential information contained therein, is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

By order of the Commission.

Issued: November 21, 1980.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN AIRLESS PAINT SPRAY PUMPS AND COMPONENTS THEREOF } Investigation No. 337–TA–90

Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: November 25, 1980.

DONALD K. DUVALL,
Chief Administrative Law Judge.

(19 CFR Part 201)

Rules of General Application

AGENCY: U.S. International Trade Commission.

ACTION: Final rule.

SUMMARY: These amendments to Part 201 (19 CFR 201) of the Commission's Rules of Practice and Procedure are intended to correct information contained in rules 201.2, 201.3, 201.4, 201.10, and 201.12 and to clarify statutory citations contained in rules 201.2 and 201.4.

EFFECTIVE DATE: Effective immediately.

FURTHER INFORMATION CONTACT: Warren H. Maruyama, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0143.

SUPPLEMENTARY INFORMATION: These rules amend part 201 of the Commission's Rules of Practice and Procedure. The changes that have been made are minor and do not affect the substance of the rules involved.

Since the Commission's rules were last revised, Congress has enacted significant new legislation concerning international trade. The Commission's rules have been amended here to conform with various statutory changes.

In the Trade Act of 1974 (88 Stat. 1978). Congress changed the Commission's name from the U.S. Tariff Commission to the U.S. International Trade Commission. The outdated references in section 201.3 to the Tariff Commission have been amended to reflect the Commission's change of name.

In the Trade Agreements Act of 1979, Congress enacted a new statutory scheme for dumping and countervailing duty investigations. The Antidumping Act, 1921, was repealed (93 Stat. 193) and replaced by a new antidumping provision (93 Stat. 162) to be codified at 19 U.S.C. 1673. Congress also enacted a new countervailing duty provision (93 Stat. 151) applicable to countries which have signed the Subsidies Code and a limited class of other countries entitled to special treatment because of agreements with the United States. The new countervailing duty provision is to be codified at 19 U.S.C.

1671. Congress retained the previous countervailing duty provision (19 U.S.C. 1303), but limited its application to countries which have not signed the Subsidies Code and are not entitled to special treatment. Statutory references in sections 201.2 and 201.4 have been changed to reflect the new scheme.

In addition, the Commission has closed the Commission's New York field office located in suite 629, 6 World Trade Center, New York, N.Y. 10048. Sections 201.3 and 201.10 refer to a Commission field office in New York City. These references have now become inaccurate, and might mislead and inconvenience members of the public. The Commission has, therefore, amended the rules by deleting any mention of a New York office.

Citations contained in certain rules have also been changed. The amendments are summarized below.

Explanation of Amended Rules

Section 201.2

The definition of the "Tariff Act" has been changed to, " 'Tariff Act' means the Tariff Act of 1930, 19 U.S.C. 1202–1677." The definition of the "Trade Expansion Act" formerly contained in subsection (c) has been changed to " 'Trade Expansion Act' means the Trade Expansion Act of 1962, 19 U.S.C. 1801–1991."

The definition of the "Antidumping Act" previously contained in former subsection (d) has been deleted, and former subsection (e) has been renumbered subsection (d). In addition, the definition of the "Trade Act" formerly contained in subsection (e) and now contained in subsection (d) has been changed to: " 'Trade Act' means the Trade Act of 1974, 19 U.S.C. 2101–2487." Former subsections (f), (g), and (h) have been renumbered (e), (f), and (g), respectively.

Section 201.3

The references to the "Tariff Commission" in subsections (a) and (b) have been changed to the "International Trade Commission." The reference to the New York branch office has been deleted from subsection (a), and the Secretary's address has been added to subsection (b).

Section 201.4(d)

The previous citation to "Public Law 93–618" has been changed to "19 U.S.C. 2251" to reflect the codification of the Trade Act of 1974 in the United States Code. The references to the Antidumping Act, 1921 and to sections 303 or 337 of the Tariff Act of 1930 have been removed, and in lieu thereof, a new reference to the antidumping provisions (19 U.S.C. 1673) or the countervailing duties provisions (19

U.S.C. 1303, 19 U.S.C. 1671 et seq.) of the Tariff Act of 1930 has been inserted.

Section 201.10

The reference to the Commission's previous practice of posting formal notice of Commission actions in its New York field office has been deleted in view of the closing of that office.

Section 201.12(b)

The word transcript has been changed to record in order to more accurately reflect Commission practice.

The amended rules are set forth below:

Part 201 of the Commission's Rules of Practice and Procedure (19 CFR 201) is amended in sections 201.2, 201.3, 201.4, 201.10, and 201.12 to read as follows:

Section 201.2 Definitions.

As used in this chapter—

(a) Commission means the United States International Trade Commission;

(b) Tariff Act means the Tariff Act of 1930, 19 U.S.C. 1202–1677;

(c) Trade Expansion Act means the Trade Expansion Act of 1962, 19 U.S.C. 1801–1991;

(d) Trade Act means the Trade Act of 1974, 19 U.S.C. 2101–2487;

(e) Trade Agreements Act means the Trade Agreements Act of 1979, Public Law No. 96–39, 93 Stat. 144;

(f) Rule means a section of the Commission Rules of Practice and Procedure (19 CFR chapter II);

(g) Secretary means the Secretary of the Commission.

Section 201.3 Commission offices, mailing address, and hours.

(a) *Offices.*—The Commission's offices are located in the United States International Trade Commission Building on E Street between 7th and 8th Streets NW., Washington, D.C.

(b) *Mailing Address.*—All communications to the Commission should be addressed to the "Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436."

(c) *Hours.*—The hours of the Commission are from 8:45 a.m. to 5:15 p.m., eastern standard or daylight saving time, whichever is in effect, in Washington, D.C.

Section 201.4(d) Presentation of matter that may come within the preview of other laws.

Whenever any party of person, including the Commission staff, has reason to believe that (1) a matter under investigation pursuant to

section 337 of the Tariff Act of 1930, or (2) a matter under an investigation pursuant to section 201 of the Trade Act of 1974 (19 U.S.C. 2251), which is causing increased imports may come within the purview of another remedial provision of law not the basis of such investigation, including but not limited to the antidumping provisions (19 U.S.C. 1673) or the countervailing duty provisions (19 U.S.C. 1303, 19 U.S.C. 1671 et seq.) of the Tariff Act of 1930, then the party or persons may file a suggestion of notification with the Commission that the appropriate agency be notified of such matter or circumstances, together with such information as the party or person has available. The Commission Secretary shall promptly thereafter publish notice of the filing of such suggestion and information, and make them available for inspection and copying to the extent permitted by law. Any person may comment on the suggestion within 10 days after the publication of said notice. Thereafter, the Commission shall determine whether notification is appropriate under the law and, if so, shall notify the appropriate agency of such matters or circumstances. The Commission may at any time make such notification in the absence of a suggestion under this rule when the Commission has reason to believe, on the basis of information before it, that notification is appropriate under law.

Section 201.10 Public notices.

Formal notice of the receipt of documents properly filed, of the institution of investigations, of public hearings, and, as required or appropriate, of other formal actions of the Commission, will be given by publication in the Federal Register. In addition to such formal notice, a copy of each notice will be posted at the Office of the Secretary of the Commission in Washington, D.C., and copies will be sent to press associations, to trade and similar organizations of producers and importers, and to others known to the Commission to have an interest in the subject matter. An announcement regarding the notice will be furnished to the Treasury Department for publication in Treasury decisions and to the Department of Commerce for publication in International Commerce.

Section 201.12(d) Order of the Testimony.

Unless otherwise ordered by the presiding officials, witnesses will give testimony in the order designated by the Secretary of the Commission. Each witness, after being duly sworn, will be permitted to proceed with his or her testimony without interruption except by presiding officials. The Commission may permit witnesses to sum-

marize any prepared statements orally. Prepared statements, however, will be made a part of the record.

By order of the Commission.

Issued: November 25, 1980.

KENNETH R. MASON,
Secretary.

(731–TA–37 (Preliminary))

CERTAIN IRON-METAL CASTINGS FROM INDIA

Notice of Institution of Preliminary Antidumping Investigation and Scheduling of Conference

AGENCY: U.S. International Trade Commission.

ACTION: Institution of preliminary antidumping investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports from India of certain iron-metal castings, provided for in item 657.09 of the Tariff Schedules of the United States (TSUS), allegedly sold or likely to be sold at less than fair value (LTFV).

EFFECTIVE DATE: November 19, 1980.

FOR FURTHER INFORMATION CONTACT: Patrick J. Magrath, Office of Investigations, 202–523–0283.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This investigation is being instituted following receipt of a petition on November 19, 1980, filed by Pinkerton Foundry, Inc., Lodi, Calif., on behalf of domestic producers of certain iron-metal castings. The petition requested the imposition of additional duties in an amount equal to the amount by which the foreign cost of production exceeds the U.S. price of certain iron-metal castings imported from India.

AUTHORITY

Section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) requires the Commission to make a determination of whether there is a reasonable indication that an industry in the United States is materially injured, or is threatned with material injury or the establishment of an industry in the United States is materially retarded, by reason of imports alleged to be, or likely to be, sold in the United States at LTFV. Such a determination must be made within 45 days after the date on which a petition is filed under section 732(b) or on

which notice is received from the Department of Commerce of an investigation commenced under section 732(a). Accordingly, the Commission, on November 26, 1980, instituted preliminary antidumping investigation No. 731–TA–37. This investigation will be subject to the provisions of part 207 of the Commission's rules of practices and procedure (19 CFR 207, 44 F.R. 76457) and particularly, subpart B thereof.

For the purposes of this investigation, the term certain iron-metal castings means manhole covers and frames, catch basin grates and frames, and cleanout covers and frames, provided for in item 657.09 of the Tariff Schedules of the United States.

WRITTEN SUBMISSION

Any person may submit to the Commission on or before December 15, 1980, a written statement of information pertinent to the subject matter of this investigation. A signed original and 19 copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top Confidential Business Data. Confidential submissions must conform with the requirements of section 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

CONFERENCE

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10 a.m., e.s.t., on Wednesday, December 10, 1980, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Parties wishing to participate in the conference should contact the investigator for this investigation, Mr. Patrick J. Magrath; 202–523–0283. It is anticipated that parties in support of the petition for antidumping duties and parties opposed to such petition will each be collectively allocated one hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by the investigator.

INSPECTION OF PETITION

The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

By order of the Commission.

Issued: November 26, 1980.

KENNETH R. MASON,
Secretary.

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